

RUIZ.0003P



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	:	Cedora Ruiz)	Group Art Unit: 3751
)	
Appl. No.	:	10/762,843)	
)	
Filed	:	January 21, 2004)	I hereby certify that this correspondence and all marked attachments are being deposited with the United States Postal Service as first-class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Arlington, VA 22313-1450, on
)	
For	:	WRITING IMPLEMENT)	
)	
Examiner	:	David J. Walczak)	R. Scott Wade, Reg. No. 37,755
)	

I hereby certify that this correspondence and all marked attachments are being deposited with the United States Postal Service as first-class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Arlington, VA 22313-1450, on

July 22, 2005

(Date)

R. Scott Wade, Reg. No. 37,755

REQUEST TO WITHDRAW NOTICE OF ABANDONMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is in response to the Notice of Abandonment mailed July 12, 2005.

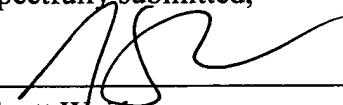
On July 5, 2005, within the 6-month statutory period to reply to the Office Action mailed January 7, 2005, Applicant filed a response. Enclosed herewith is a copy of the Response which includes a Certificate of Mailing in accordance with 37 C.F.R. § 1.8. As certified, the Response and associated papers (including a request for three-month extension of time), were all mailed on July 5, 2005. Moreover, as indicated by the copy of the return postcard attached hereto, this Response was actually received by the U.S. Patent and Trademark Office on July 7, 2005, within the period for response.

Appl. No. : 10/762,843
Filed : January 21, 2004

As Applicant timely filed a response to the outstanding Office Action, Applicant respectfully requests entry of the Response and withdrawal of the Notice of Abandonment relative to the present application.

Respectfully submitted,

Dated: July 22, 2005 By:


R. Scott Weide
Registration No. 37,755
Weide & Miller, Ltd.
Bank West Building, 5th Floor
7251 West Lake Mead Blvd., Suite 530
Las Vegas, NV 89128
(702) 382-4804 (Pacific time)



RECEIVED IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Certificate of Mailing, First Class Mail in an envelope addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, mailed on July 5, 2005;

- (X) Transmittal in 2 pages;
- (X) Response to Office Action in 11 pages and 2 replacement drawing sheets;
- (X) Declaration of Prior Invention Under 37 C.F.R. §1.131 by Inventor Cedora Ruiz in 7 pages;
- (X) Check in the amount of \$510.00 for a 3-month extension of time
- (X) Prepaid return postcard.

Applicant: Cedora Ruiz
Serial No.: 10/762,843
Title: WRITING IMPLEMENT
Reference No.: RUIZ.0003P



RECEIVED
7/15/05

R. Scott Weide, Esq.
Weide & Miller, Ltd.
7251 W. Lake Mead Blvd.
Suite 530
Las Vegas, NV 89128



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Cedora Ruiz

) Group Art Unit: 3713

Appl. No. : 10/762,843

) I hereby certify that this correspondence and all marked
attachments are being deposited with the United States Postal
Service as first-class mail in an envelope addressed to:
Commissioner for Patents, P.O. Box 1450, Alexandria, VA
22313-1450, on:

Filed : January 21, 2004

) July 5, 2005

(Date)

For : WRITING IMPLEMENT

) R. Scott Weide, Reg. No. 3V,755

Examiner : David J. Walczak

TRANSMITTAL

Mail Stop Amendment
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

Sir:

Transmitted herewith is:

- (X) A Response to Office Action in 11 pages and 2 sheets of replacement drawings;
- (X) A Declaration of Prior Invention Under 37 C.F.R. §1.131 by Inventor Cedora Ruiz in 7 pages;
- (X) A check in the amount of \$510.00 for a three-month extension of time; and
- (X) A return prepaid postcard.

FEE CALCULATION

CLAIMS REMAINING AFTER AMENDMENT	HIGHEST NO. PREVIOUSLY PAID FOR	PRESENT EXTRA	RATE	ADDITIONAL FEE
Total Claims 9	- 20 = 0	x	\$ 50	= \$0
Independent Claims 1	- 3 = 0	x	\$200	= \$0
If application contains any multiple dependent claim(s), then add			\$360	\$0
			TOTAL	\$0
			REDUCTION BY ½ FOR FILING BY A SMALL ENTITY	\$0
			TOTAL ADDITIONAL FEE FOR THIS AMENDMENT	\$0

(X) Applicant is a small entity.

(X) Applicant hereby requests a 3 month extension of time in accordance with 37 C.F.R. § 1.136 to file this response and has submitted herewith the extension of time fee.

Appl. No. : 1,62,843
Filed : January 21, 2004

(X) The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Account No.: 502200. A duplicate copy of this sheet is enclosed.

Dated: July 5, 2005 By: R. Scott Weide

Respectfully submitted,
R. Scott Weide
Attorney of Record
Registration No. 37,755
Weide & Miller, Ltd.
7251 W. Lake Mead Blvd., Suite 530
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84-771224

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7/5/2005

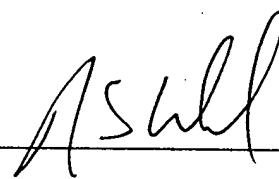
PAY TO THE ORDER OF Commissioner of Patent & Trademarks

\$ **510.00

Five Hundred Ten and 00/100*****

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WEIDE & MILLER, LTD
Commissioner of Patent & Trademarks

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Firm Checking

ruiz.3p

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RUIZ.0003P

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	:	Cedora Ruiz)	Group Art Unit: 3751
Appl. No.	:	10/762,843)	
Filed	:	January 21, 2004)	
For	:	WRITING IMPLEMENT)	
Examiner	:	David J. Walczak)	

I hereby certify that this correspondence and all marked attachments are being deposited with the United States Postal Service as first-class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Arlington, VA 22313-1450, on

July 5, 2005

(Date)

R. Scott Weide, Reg. No. 37,755

RESPONSE TO OFFICE ACTION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is in response to the Office Action mailed January 7, 2005. Applicant hereby requests a 3 month extension of time in accordance with 37 C.F.R. § 1.136 to file this response and has submitted herewith the extension of time fee.

Please amend the application as indicated in the attached sections:

Appl. No. : 10/762,843
Filed : January 21, 2004

IN THE SPECIFICATION:

Please amend the following paragraphs as indicated:

[0001] This application is a continuation application of U.S. Application Serial No. 10/347,967, filed January 21, 2003, now abandoned.

[0031] In one embodiment, the implement 20 includes a cartridge 34 containing writing material ~~is supported by the tip 32~~. In one embodiment, the cartridge 34 is an ink cartridge. Such cartridges are well known. As illustrated, the cartridge 34 may include a dispenser 36 and a well 38. The well 38 comprises an elongate cylinder or other housing containing ink. The ink may be of a variety of types.

Appl. No. : 10/762,843
Filed : January 21, 2004

IN THE DRAWINGS:

Please replace the sheets of figures with the replacement sheets attached.

By these replacement sheets, Applicant has corrected reference number 134 to number 136 in Figure 4, and has added reference number 240 to Figure 5.

Appl. No. : 10/762,843
Filed : January 21, 2004

IN THE CLAIMS:

1. - 9. (Cancelled)

10. (Original)

A writing implement comprising an elongate, generally cylindrical housing having a first end and a second end, said housing defining an interior area, said housing comprising a substantially translucent material, said second end of said housing and said interior closed, said implement including a tip configured to dispense writing material stored in a well, said well containing writing material extending from said tip into said interior area of said housing, said implement including a plurality of solid ornamental elements substantially filling said interior area between said first end and second end of said housing between an exterior of said well and an interior of said housing, whereby said solid elements generally obscure said well within said housing.

11. (Original)

The writing implement in accordance with Claim 10 wherein said ornamental elements comprise balls having a diameter in the range of about .03125 - .125 inches.

12. (Original)

The writing implement in accordance with Claim 10 wherein said writing material comprises ink.

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13. (Original)

The writing implement in accordance with Claim 10 wherein said ornamental elements have a size which is a fraction of a distance between said interior of said housing and said exterior of said well, so that a plurality of said ornamental elements may be layered between said interior of said housing and said exterior of said well.

14. (Original)

The writing implement in accordance with Claim 13 wherein said ornamental elements have a size in relation to said distance between said interior of said housing and said exterior of said well that at least three ornamented elements fit within said distance.

15. (New)

The writing implement in accordance with Claim 10 wherein said ornamental ornaments are contained within, but not connected to, said housing, whereby a position of said ornamental elements may change relative to said housing.

16. (New)

The writing implement in accordance with Claim 15 wherein said ornamental elements may move relative to one another and said housing in response to movement of said housing.

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17. (New)

The writing implement in accordance with Claim 10 wherein said tip extends from said first end of said housing and closes said housing at said first end, and wherein said ornamental elements are located in said interior space between said tip and said second end of said housing.

18. (New)

The writing implement in accordance with Claim 10 wherein said housing comprises a single wall having an exterior and an interior and said interior space is defined by said wall.

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Filed : January 21, 2004

REMARKS

This is in response to the Office Action mailed January 7, 2005.

As indicated below, in this Action, the Examiner cited as prior art U.S. Patent Publication US 2004/0086318 to Geddes. Submitted herewith is the Declaration of Prior Inventorship Under 37 C.F.R. § 1.131 of Cedora Ruiz. By this Declaration, the Applicant establishes prior inventorship of the present invention, thus negating Geddes as a prior art reference.

Drawings/Specification

By the Action, the Examiner noted that replacement figures must be submitted in order to effect correction of certain reference numbers. By this Response, Applicant has submitted these replacement figures.

The Examiner also requested that the prior application be updated, and noted a grammatical error in Paragraph [0031]. Applicant thanks the Examiner for noting these items and has requested their correction herein.

Claim Rejections - Section 102

By the Action, the Examiner rejected Claims 10 and 12-14 under 35 U.S.C. § 102(b) as being anticipated by Siegel. Applicant respectfully traverses this rejection.

Applicant asserts that Siegel discloses a pen comprising a barrel (11) which defines an interior and an exterior. A ball point cartridge (13) is located in the interior of the barrel (11) (along with a spring (14)). An opaque sleeve (20) which is adapted to carry indicia, such as an advertisement,

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Filed : January 21, 2004

is located at the exterior of the barrel (11). This sleeve (20) may be protected by a covering sleeve (23), which is also located at the exterior of the barrel (11).

Applicant notes that Claim 10 is directed to a writing implement comprising a housing which defines an interior space which houses both a well containing writing material and a plurality of solid ornamental elements. In this configuration, the plurality of ornamental elements are located within the interior of the housing around the well. In this regard, Applicant asserts that Siegel does not disclose or suggest such a configuration, in that Siegel explicitly discloses a configuration where the sleeve is located at the exterior of the housing.

The Examiner also rejected Claims 10 and 12 as being anticipated by Dirks (USN 4,541,630). Applicant again asserts that Dirks does not disclose or suggest each of the elements of the writing implement claimed in Claim 10. Claim 10 recites a writing implement having a housing with a first end and a second end and an interior area between the ends. A plurality of ornamental elements substantially fills the interior area between the ends.

Dirks discloses a pen with a random number generator. As such, Dirks' pen has body (11). A central member (22) is connected to the top of the body (11). The central member (22) includes a cylindrical portion (24) located in a sleeve (30). A small number of balls (40) are configured to be received at the exterior of the cylindrical portion (24) beneath the sleeve (30), such as in slots (37,38) in the cylindrical portion.

First, Applicant asserts that Dirks does not even disclose a writing implement with a housing defining an interior which houses both ornamental elements and a well of a writing implement. If the body (11) of Dirks is construed as the "housing," then the "housing" of Dirks does not also

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contain ornamental elements. Dirks does include a cylindrical portion (24) which is connected to the body (11), but the balls (40) are located at the exterior of this cylindrical portion (while the ink well/refill is located at the interior thereof). Dirks also discloses a sleeve (30). While the balls (40) are located within the sleeve, they are not located with an interior space between the well and the sleeve (30), but are instead located between the sleeve (30) and the inner cylindrical member (24).

Applicant also asserts that Dirks also does not disclose a writing implement including a plurality of ornamental elements substantially filling an interior of the housing of the writing implement from a first to a second end - Dirks' body (11) is completely devoid of "ornamental elements," and are simply located at certain exterior portions of the cylindrical portion (24) above the body (11).

Lastly, the Examiner rejected Claims 10 and 12 as being anticipated by Geddes. As indicated above, Applicant has submitted herewith a Declaration of Prior Inventorship Under 37 C.F.R. § 1.131 by which the inventor clearly establishes prior invention of the present invention, thus eliminating Geddes as a potential prior art reference

Claim Rejections - Section 103

The Examiner rejected Claim 11 under 35 U.S.C. § 103 as being unpatentable over Dirks. The Examiner asserts that Dirks teaches all of the elements of the invention except for the size of the ornamental elements. Applicant asserts that because Dirks does not disclose even the basic elements of the invention as claimed in underlying independent Claim 10, Claim 11 is allowable as depending thereon.

Appl. No. : 10/762,843
Filed : January 21, 2004

The Examiner also rejected Claims 11, 13 and 14 as being unpatentable over Geddes. Relative to this rejection, Applicant once again notes that prior inventorship has been established, thus removing Geddes as a potential prior art reference.

New Claims 15-18

Applicant has presented new Claims 15-18 and asserts that these claims further define the invention over the cited prior art. For example, relative to Claims 15 and 16, Applicant asserts that Siegel does not disclose ornamental elements which can move within the housing. Instead, Siegel simply disclose a sleeve which is fixed to an exterior of the barrel (11) of a pen. Relative to Claim 17, Applicant asserts that Dirks does not disclose a writing implement in which ornamental elements fill an interior area between a tip and a second end of a housing. In Dirks, balls are located only at certain exterior areas of a secondary cylindrical portion of the pen.

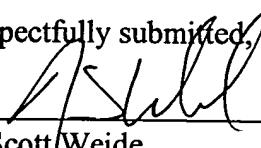
Appl. No. : 10/762,843
Filed : January 21, 2004

Summary

Applicants thank the Examiner for the indication that Claims 10-18 are allowable. Applicants assert that these new claims are in a condition for allowance and respectfully request a notice as to the same. If any matters remain outstanding, the Examiner is invited to contact the undersigned by telephone.

Dated: July 5, 2005 By:

Respectfully submitted,


R. Scott Weide
Registration No. 37,755
Weide & Miller, Ltd.
Bank West Building, 5th Floor
7251 West Lake Mead Blvd., Suite 530
Las Vegas, NV 89128
(702) 382-4804 (Pacific time)

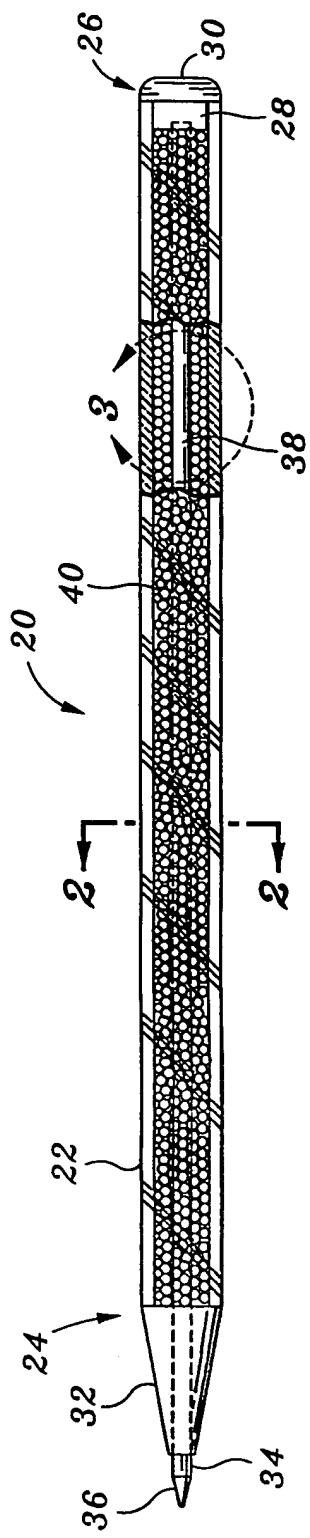


Fig. 1

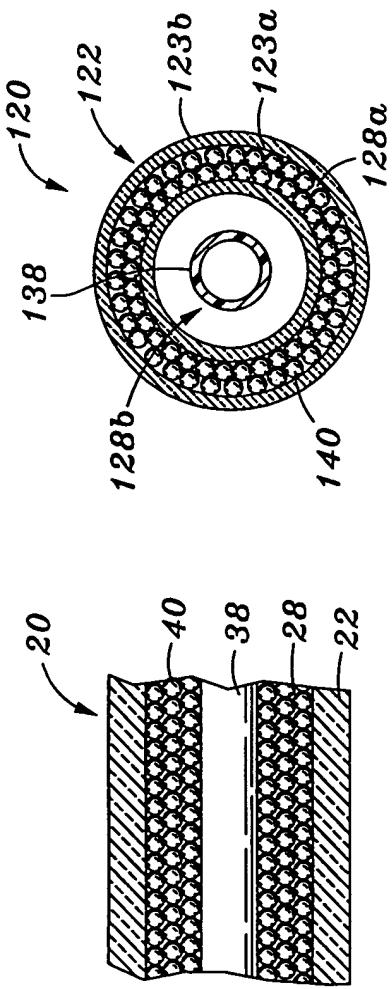


Fig. 2

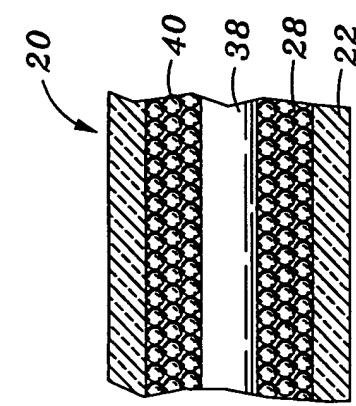


Fig. 3

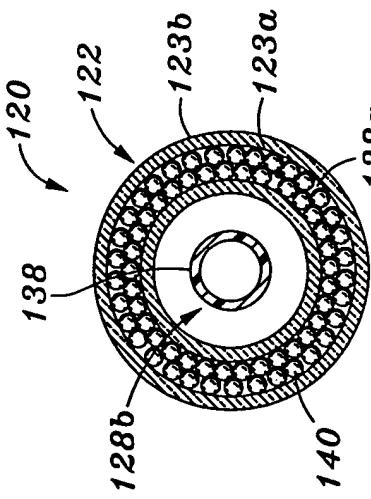


Fig. 4

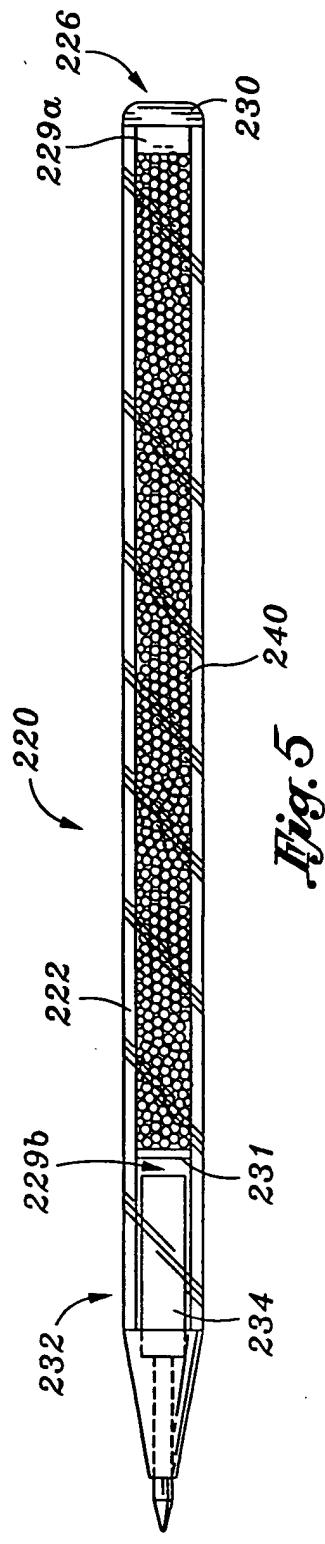


Fig. 5

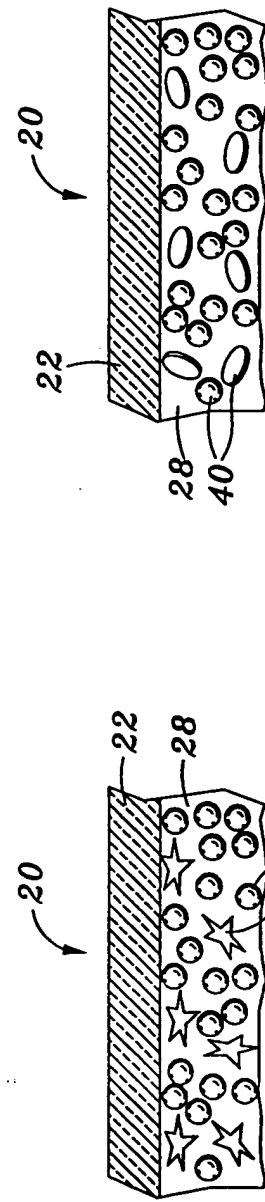


Fig. 6

Fig. 7

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	:	Cedora Ruiz)	Group Art Unit: 3713
Appl. No.	:	10/762,843)	
Filed	:	January 21, 2004)	
For	:	WRITING IMPLEMENT)	
Examiner	:	David J. Walczak)	



**DECLARATION OF PRIOR INVENTION UNDER 37 C.F.R. § 1.131
BY INVENTOR CEDORA RUIZ**

I, Cedora Ruiz declare as follows:

1. I am a resident of the State of Wyoming, U.S.A. I make this Declaration on personal knowledge, and if called and sworn as a witness, I could and would competently testify as set forth below.
2. I am the inventor of the invention claimed in the above-referenced application.
3. I am aware that the U.S. Patent and Trademark Office has rejected claims of this application in view of U.S. Patent Application Publication No. 2004/0086318 for application Serial No. 10/283,438 filed October 30, 2002.
4. I invented the invention which is disclosed and claimed in the present application before October 30, 2002.
5. Many months before October 30, 2002, I had created a number of prototypes of the invention which is described and claimed in my application. On or about July 29, 2002, I sent several of these prototypes to my attorney, R. Scott Weide, for evaluation relative to seeking patent protection for my invention. Attached hereto as Exhibit A is a photograph of the package by which I forwarded the prototypes.

Appl. No. : 10/762,843
Filed : January 21, 2004

6. On or about September 2, 2002, my attorney commissioned a patent search directed to the invention. On or about October 8, 2002, my attorney reported the results of the patent search and I elected to file a patent application to the invention.

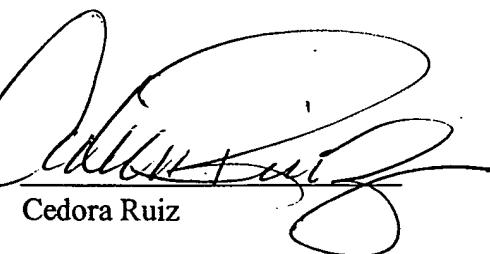
7. On or about October 23, 2002, my attorney prepared a set of sketches of figures illustrating my invention and forwarded those figures to a draftsman to be formalized and filed with the patent application. Attached as Exhibit B is a copy of this letter and attached sketches.

8. On or about December 6, 2002, my attorney forwarded to me the first draft of the patent application, which I then reviewed.

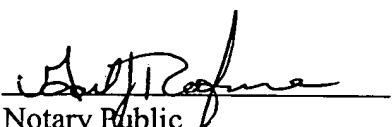
9. On January 21, 2002, after the patent application had been finalized and I had signed the formal papers, my attorney filed U.S. Application Serial No. 10/347,967. The present application comprises a continuation of this earlier-filed parent application.

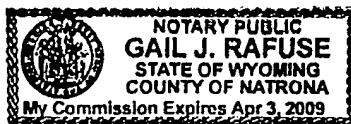
10. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 1 day of ^{July} June 2005.

By: 
Cedora Ruiz

SUBSCRIBED and SWORN to before me
this 1st day of ^{July} June 2005.


Notary Public



rsw-17333

EXHIBIT A

Leora Kiz
131 Dahlia
Casper WY 82604

FIRST CLASS

Scott Weide
330 South 3rd Suite 1130
Las Vegas, NV 89101

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EXHIBIT B

WEIDE &
MILLER, Ltd.

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Telephone (702)-382-4804
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On the web: www.WeideMiller.com

R. SCOTT WEIDE
REGISTERED PATENT ATTORNEY
LICENSED IN CALIFORNIA & NEVADA

October 23, 2002

Mr. Vahid Hamidi
CAD Illustration Service
17 Cayman Brad
Aliso Viejo, CA 92656

Re: Application Figures
U.S. Utility and Design Patent Applications for Writing Utensil
Our Reference Nos.: RUIZ.0001P/RUIZ.0002P

Dear Vahid:

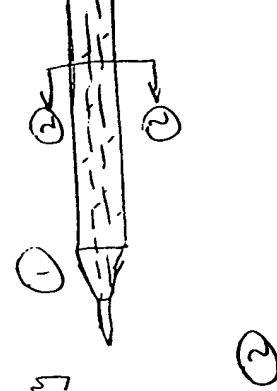
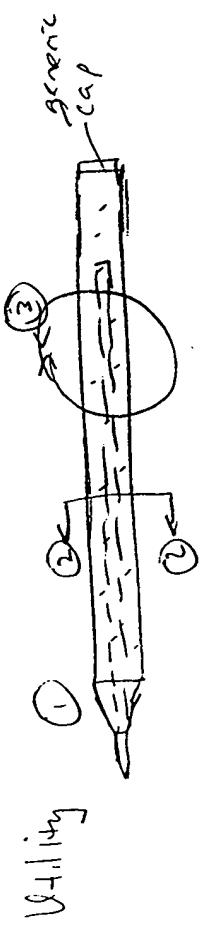
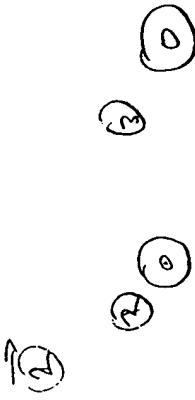
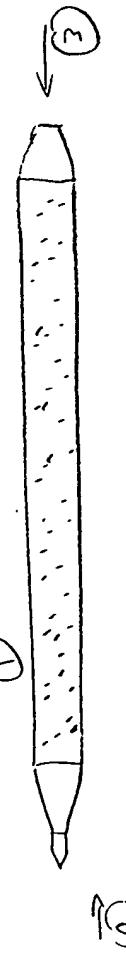
Please prepare a set of figures for the above-referenced applications. I have enclosed sketches of the figure sets along with a sample of the invention for your use in preparing the figures. For both applications I wish to focus on a "generic" writing implement having an internal hollow cavity having a plurality of bead elements occupying the cavity. Thus, please do not show the "cap" or any external marking on the device which is particular to the specific sample which I have enclosed.

Let me know if you have any questions.

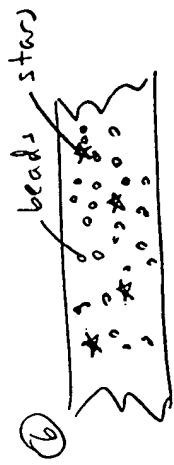
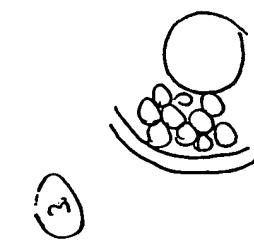
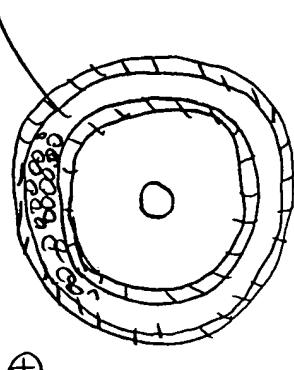
Very truly yours,
R. Scott Weide

Enclosure

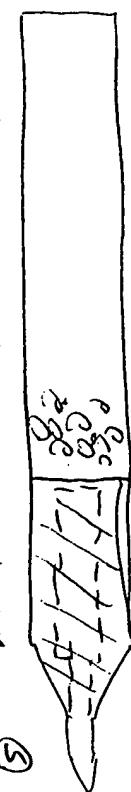
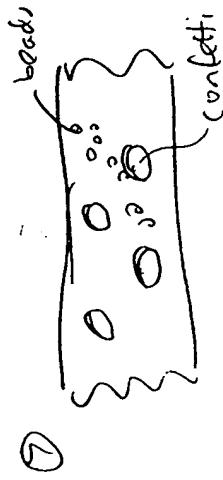
Design



Cross-sectional view of another embodiment where beads located in separate compartment



other items
besides
beads



another embodiment, like one end, beads or other

